

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No. 2:10-1087
(Lead action)

\$88,029.08, More or Less,
in United States Currency,

MEMORANDUM OPINION AND ORDER

Pending is an August 23, 2011, filing by interested parties Katherine A. Hoover, M.D., and John F. Tomasic styled "NOTICE THAT THIS CASE HAS BEEN DISMISSED ("notice")."

The notice appears based upon the court's August 8, 2011, dismissal of a consolidated case, United States v. \$27,671.50, more or less in United States currency, No. 2:11-0101, attached to this matter. The interested parties conclude that dismissal of the consolidated case necessarily resulted in the dismissal of this lead action. The notice appears designed to excuse Dr. Hoover's attendance at her August 30, 2011, deposition. (See, e.g., Notice at 1 ("Therefore, there is no legal reason to depose Dr. Hoover. The United States Attorney has used the media to harass and defame Dr. Hoover and her husband John F. Tomasic and will attempt to use the deposition, which can not [sic] legally be held, for an improper purpose.")).

Inasmuch as the notice lacks any legal basis, it is without any legal effect. Dr. Hoover is directed to appear at her deposition, as previously ordered by the United States Magistrate Judge on August 12, 2011. The August 12, 2011, directive and its cautionary language are reproduced in pertinent part below:

It is hereby ORDERED that the Motion to Compel, as amended, is granted, and it is further ORDERED that interested party Katherine Anne Hoover, M.D. shall appear at the office of the United States Attorney, 300 Virginia Street East, Room 4000, Charleston, West Virginia, on Tuesday, August 30, 2011, at 10:00 a.m., Eastern Daylight Time, and shall testify at her deposition in this action, pursuant to the provisions of Rule 30, Federal Rules of Civil Procedure.

Interested party Katherine Anne Hoover, M.D. is hereby placed on NOTICE that should she fail to appear and testify as ordered, she will be subjecting herself to the imposition of sanctions, as specified in Rule 37, which may include one or more of the following:

1. Entry of an order requiring her to pay the reasonable expenses, including attorney's fees, caused by her failure to appear on July 12, 2011 and August 30, 2011;
2. Entry of an order that designated facts (such as those set forth in the Verified Complaint of Forfeiture) be taken as established for purposes of the action;
3. Entry of an order prohibiting Katherine Anne Hoover, M.D. from opposing the claims of the United States;
4. Entry of an order prohibiting Katherine Anne Hoover, M.D. from introducing designated matters in evidence;

5. Entry of an order striking pleadings in whole or in part, such as Katherine Anne Hoover's verified response to the complaint (ECF No. 20);

6. Entry of an order staying further proceedings until the order is obeyed;


7. Entry of an order rendering default judgment against Katherine Anne Hoover;

8. Entry of an order treating as contempt of court the failure to obey this Order granting the Motion to Compel, as amended.

United States v. \$88,029.08, more or less, in United States currency, 2:10-1087 (S.D. W. Va. Aug. 12, 2011).

The Clerk is directed to forward copies of this order to (1) all counsel of record via the CM/ECF system, and (2) any unrepresented parties by either facsimile or priority overnight delivery.

DATED: August 24, 2011



John T. Copenhaver, Jr.
United States District Judge